

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

LOUIS CAO

PETITIONER

vs.

CIVIL ACTION No.: 3:16-CV-63-HTW-LRA

WARDEN B. MOSLEY

RESPONDENT

ORDER ADOPTING REPORT AND RECOMMENDATION

BEFORE THIS COURT is the Report and Recommendation of the United States Magistrate Judge Linda Anderson [**Docket no. 15**]. In her Report and Recommendation, filed on June 19, 2018, Magistrate Judge Anderson recommended that the petitioner's Petition for Writ of Habeas Corpus [**Docket no. 1**] be DISMISSED for either of two reasons: that petitioner had failed to exhaust his administrative remedies before filing his lawsuit; or that petitioner's allegations fail on the merits. Magistrate Judge Anderson directed the *pro se* petitioner to file any objections within fourteen (14) days. The petitioner has failed to do so.

Based upon the findings and recommendation contained in the Report and Recommendation [**Docket no. 15**], this court finds it well-taken. Therefore, the Report and Recommendation of the Magistrate Judge is hereby **ADOPTED** as the order of this court.

Accordingly, this order hereby **DISMISSES** this lawsuit **WITHOUT PREJUDICE** as petitioner has failed to exhaust his remedies before filing the instant lawsuit.

Further, this court finds that, even had petitioner exhausted his administrative remedies, then this court would have found that petitioner's complaint fails on the merits, and would have dismissed this lawsuit with prejudice. The parties are to bear their own costs.

A final order adverse to the petitioner having been filed in the captioned habeas corpus case, in which the detention complained of arises out of process issued by a state court or a

proceeding pursuant to 28 U.S.C. § 2241, the court, considering the record in the case and the requirements of 28 U.S.C. § 2253, Rule 22(b) of the Federal Rules of Appellate Procedure, and Rule 11(a) of the Rules Governing Section 2241 Cases in the United States District Courts, hereby finds that:

A Certificate of Appealability should not issue. The applicant has failed to make a substantial showing of the denial of a constitutional right.

SO ORDERED AND ADJUDGED this the 23rd day of July, 2018.

s/ HENRY T. WINGATE
UNITED STATES DISTRICT COURT JUDGE

Order Adopting Report and Recommendation
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